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STATE LAW IN ISLAM (CONSTRUCTION AND PERSPECTIVE)

Zulkifli¹, Dewi Dahlan²

¹Batusangkar State Islamic Institute, Jl. Sudirman No. 137 Batusangkar West Sumatra.
Email: jundjafar@gmail.com

²Batusangkar State Islamic Institute, Jl. Sudirman No. 137 Batusangkar West Sumatra.
Email: dewidahlan@iainbatusangkar.ac.id

Abstract: *Islamic law governs all aspects of human life, which includes two laws (rules) of life, namely the category of *hablun min Allah* (issue of worship) and *hablun min al-Nas* (muamalah issues in broad sense). Among Islamic law the *hablun min al-Nas* category (which is called *mu'amalah* in the broadest sense) is a matter of the rule of how a government is enforced and how the position of law in a country. Studies on this matter have not been evenly implemented and not yet known by all people. This study is interesting, because the rules on *siyasah* (Constitutional Law) are still in talks by experts, especially Muslim experts. This paper presents how the existence and future of this constitutional law in the study of Islamic Law.*

Keywords: Islamic Law, State Administration and Islamic Constitutional Law

INTRODUCTION

Islamic law covers all aspects of human life, explains and regulates human relations with God and human relations with each other and with the natural environment. Muslims are instructed to practice the teachings of Islam as a whole and forbid them to follow the will and invitation of Satan. (Q.S: Al-Baqarah: 208). Al-Qur'an contains a number of verses as instructions and guidelines for humans in living in society and state. Among other things, verses that teach about the position of man on earth and the principles that must be considered in social life, and there are also teachings relating to the life of the rules of politics or constitutionality. Therefore, Muslims are required and must learn Al-Qur'an and strive to uphold its teachings. How the concept of the State and the state administration according to Islam requires an independent study and even must be seen how Islam laid the foundations.

This paper reveals how the concept of statehood in Islam? To answer these basic problems, it is necessary to disclose what the Messenger of Allah said, and al-Khulafa al-Rashidin had demonstrated and later developed.

METHODS

The author conducted a study of several literature on Islamic law concerning State Administration as well as about non-Islamic law, then compared them to one another. Then the author looks at the principles of Islamic teachings in general and is related to Islamic teachings about *fiqh* with all its scope. From this it can be understood that Islamic constitutional law is a study that is still not final and has the opportunity to continue to be studied.

DISCUSSION RESULTS

The Scope of Islamic Law

The term law in Islam has two meanings, namely *Shari'ah* and *fiqh*. The *Shari'ah* consists of the revelations of Allah and the sunnah of the Prophet Muhammad, and *fiqh* is the result of understanding of the *Shari'ah*, and comes from Al-Qur'an and the Sunnah, while *ra'yu* serves to explain it.

The word Islamic law consists of two syllables derived from Arabic, namely the words "law" and "Islam". The word law means provisions and fixity, while the Islamic word is contained in Al-Qur'an, ie nouns that come from the verb "*salima*" then become Islam which means peace, prosperity, salvation, or surrender (self) and obedience. Islamic law means all Islamic religious regulations

covering all aspects of human life in the form of morals, religious laws, beliefs as a manifestation of the actual attitude of a person who is Muslim. In other words, the integral meaning of *Shari'ah* (Islamic law) is the whole regulation of Allah and His Messenger, both in the relationship between humans and Allah, humans and humans, and humans with other living beings. In terms of terms, according to Abdurrauf's law, "the regulations consist of provisions, orders and prohibitions, which give rise to obligations and/or rights, which regulate all the movements of human life even to human life after death.

However, the scope of Islamic law is classified into two major groups, namely:

1. Law that deals with worship, and
2. Laws that discuss community discussion. Details are announced:
 - a. The law of worship is a law that relates to humans with their God, namely faith, prayer, zakat, fasting, and pilgrimage.
 - b. Community law, namely the law that regulates human relations with each other which is translated: *mu'amalah*, *munakahat*, and *'uqubat*.
3. Announce about objects, rights, approvals, contracts, such as purchase, lease, buying, , loan, deposit, transfer of purchase, corporate trading, etc.).
4. *Munakahat*, namely the law relating to marriage and divorce and the
5. consequences such as *iddah*, *nasab*, living, curatele, inheritance, and others. The law that is approved is usually called family law in Arabic known as *Al-Ahwal Al-Syakhsiyah*. Legal coverage is considered to be commonly referred to as civil law.
6. *Uqubat* or *Jinayat*, namely the law issued regarding penalties such as those released, adultery, drunkenness, accusing adultery, and the consequences. Apart from these parts, there are other parts, namely (a) *Mukhashamat*, (b) *siyar*, (c) *ahkam as-sulthaniyah*. The explanation is:
 - a. *Mukhashamat*, the law given about the judiciary: complaints and evidences, namely matters relating to civil law events and murder law events.
 - b. *Siyar*, namely laws governing *jihad* and/or war, spoils of war, peace, relations with other religions, and other countries.
 - c. *Ahkam As-Sulthaniyah*, a law that discusses relations with heads of state, ministries, governors, soldiers, and taxes.

If the parts of Islamic law are arranged according to the system of Western law which is determined between civil law and public law, then the composition of the law of *muamalah* in the broadest sense is as follows:

1. *Munakahat* (regulating everything related to marriage, divorce, and its consequences);
2. *Wiratsah* (managing all problems related to heirs, heirs, inheritance, and inheritance distribution). This inheritance law is often called *faraid* law;
3. *Muamalah* in a special sense regulates material problems, rights to goods, human relations with the problem of buying and selling, renting a lease, union, and so on.

Public law (Islam) is:

1. *Jinayat* (contains rules about actions that are subject to criminal penalties);
2. *Al-ahkam as-sulthaniyah* (discuss matters relating to head of state, government, army, tax, etc.);
3. *Siyar* (regulating issues of war and peace, managing relations with followers of Religion, and other countries);
4. *Mukhashamat* (regulating judicial, judicial and procedural matters), and
5. *Al-Ahkam al-Iqtishadiyah*, which regulates general economic law.

From the description above, constitutional law in Islam is part of general Islamic law, namely the law of *al-ahkam* or *al-Sulthaniyyah* (discussing matters relating to the head of state, government, army, tax, etc.).

Islamic Constitutional Law

Definition of Islamic Constitutional Law

Theoretically, state administration is a rule about central power that regulates the life of the state which concerns the nature, form, task of the state and government, or vice versa. In terms of the rules governing this matter, it is called the State Law, the next one will be related to Islamic law. But there are still differences in understanding of this constitutional law.

The concept of the state is not part of English constitutional jurisprudence, while in Australia and the United States it refers to what Germans would call *Land* (see Mac Cormick, 1984:p. 65). More deeply, the English tradition was long pluralistic in its conceptions of the sources of law (Rosenfeld, 2001), with multiple cumulative and competing authoritative sources, among them custom, court decisions and statutes. Indeed, while the common law courts were long agents of the Crown, some of the mythologically most powerful contests in the English rule of law tradition, particularly the constitutional struggles of the seventeenth century, pitted them against successive wearers of that Crown, even at the cost of the head of one of those (Charles I) (Martin Krygier, 2015: 780-787).

Mustari Pide quote AV. Decey, defining constitutional law is "all regulations that contain, directly or indirectly, the highest division of power and executor in a country". With a different editor, and it seems that this is better to be held, Ibnu Kencana Shafi'i defines it with "the rules and procedures that apply in a family group, regional and regional organization that has legitimate power, authority and sovereign government leadership, in order to realize prosperity, security, order and the survival of many people (nations) in achieving common goals and ideals".

In terms of, J.H.A. Logemann, defines constitutional law as a series of legal rules regarding positions or collections of positions within the state and concerning the enactment of the law of a country. So constitutional law is the law of state organization. (Cristine Kansil, 2009) According to van Apeldoorn is a law that shows people who hold the power of government and the limits of power. (Titok Soembodo, 1988). According to W.F. The principle of constitutional law is a law that determines fundamental state apparatus and is directly related to every citizen (Cristine Kansil, 2009). According to Cristian van Vollenhoven, constitutional law is a law that regulates the procedures for the distribution of state power. (Cristine Kansil, 2000).

Characteristics or elements of state law can be summarized in three ways; first, there is a limitation of state power against the individual, meaning the state cannot act arbitrarily. State action is restricted by law, the individual has the right to the state or the people have the right to the ruler. Second, the principle of legality. Each state action must be based on the laws that have been held in advance that must be adhered to by the government or apparatus. Third, the separation of powers. So that right was actually protected then there needs to be a separation of powers, which is the body that makes laws, implement and try to be separated from each other are not in one hand. (Hamzani, 2015)

If connected with Islam, then the Islamic State Law is intended to be "the rules and procedures governed by Islam on how a family group, territoriality and regional organization that has power, legitimate authority and sovereign government leadership must behave, in order to realize prosperity, security, order, and the survival of many people (nations) in achieving their goals and aspirations for obtaining benefits".

Characteristics and Forms of Islamic Government

In international law, a country usually has three main elements, namely; 1) peoples, 2) certain regions, and 3) authoritative and sovereign government. A country is a life of a human group that is founded on the basis of social beings, which tends naturally to society, because they are unable to fulfill all their own needs without assistance or cooperation with other parties - from one side - and from the other side that humans function as the caliph of Allah (regulator and manager) on earth (QS Al-Baqarah: 30) the bearer of power as His mandate. Therefore, in living this life it must always be in accordance with His commandments in order to prosper both in the world and in the hereafter. In general, humans must always pay attention and implement *amar ma'ruf* and *nahi munkar* with meaning, an order to always do good and prevent damage.

Regarding the shape of the state, it is not determined in Al-Qur'an and the Sunnah of the Prophet. Because the essence lies in the general principles outlined in Al-Qur'an and the Sunnah of the Prophet. It's just implicitly explained by Al-Qur'an so that Muslims form a unitary state, which is reflected in the time of the Prophet and given the authority and freedom to choose and determine the form of the state that is best for them, because that includes one of the principles of *mu'amalah* life, where the majority of the law is outlined and the main points, not the *ibahah* explained in detail.

At the time of al-Khulafa al-Rashidin the government used a system of caliphs, with the consideration that this system was most suitable for them at the time, which may be called as one of the forms of *ijma* (consensus) of the companions of the Prophet at that time. But that consensus is not a rigid concept that must be applied at all times and places. In history, the royal system emerged after the Companion period. Government is determined through deliberation, with a diverse pattern of deliberation. Abu Bakr as the first caliph was appointed through an open deliberation, especially by five figures who represented all the main elements of Islamic society at that time. Umar bin Khattab as the second caliph was appointed through the appointment of Abu Bakr after holding closed consultations with several great friends and not through open elections. Usman bin Affan ranks through an election in an open meeting by the board of formators appointed by the Caliph Umar based on their individual quality considerations. Ali bin Abi Talib was appointed through elections and open meetings, but in a chaotic atmosphere so the validity of Ali's appointment then caused problems.

The nature of the caliph which was carried out in this period was that humans were social creatures and at the same time as representatives of Allah on this earth, as God's trustworthy bearers to control and manage this earth as well as possible according to the provisions outlined. Al-Qur'an confirms that Allah SWT. - the owner of actual power - can bestow to whomever He wants, so too He is able to seize power from whomever He wants. (Surah Ali Imran: 26). This form of Caliphate in contemporary times is possible to be replaced with systems that have almost the same characteristics or close together, for example the form of a republic.

In state theory, Ibn Taimiyah emphasized the supermation of Islamic law rather than a formal form of government, focusing more on the role of *Shari'ah* in the state. He understands any form of government in Islam solely as a means of *Shari'ah*. The procedure for determining the leaders of the people or the head of state does not have strict instructions in Al-Qur'an and the hadith of the prophet, only in the form of very general instructions so that Muslims seek solutions in matters that concern common interests through deliberation, and do not determine a standard pattern about how the meeting was held.

Construction of Constitutional Law in Islam

State law is an Islamic law in the *mu'amalah* category which deals with the rules of how a leadership and law are enforced. This *mu'amalah* category is a law whose majority is explained in broad outline whose development requires *ijihad* and assessment. More about the constitutional law according to Islam, found from the general principles of social life that exist in Islamic teachings. These principles are:

1. Power as trustworthy

Trustworthy words are listed in Al-Qur'an, surah al-Nisa '(4): 58 which reads:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

Meaning: Verily Allah tells you to deliver the message to those who have the right to receive it, and (tell you) if it establishes a law among men so that you determine justly. Surely Allah gives you the best teaching. Allah is ever Hearing, Seeing.

Understanding this verse is: 1) humans are obliged to convey the mandate to those who are entitled to receive it and 2) humans are required to determine the law fairly. Trustworthy words which mean lexically "calm and not afraid", (adjective), then it implies "everything that someone entrusts to others with security". Thus, the words of trust in the context of state power, means a delegation or delegation of authority originating from or originating from Allah SWT.

2. Principles of Deliberation

In Al-Qur`an there are two verses that outline the principle of deliberation as one of the basic principles in Islam. The first in surah al-Shura (42):... وامرهم شورى بينهم (...their affairs (decided) by deliberation ...). This verse illustrates that in every issue that concerns the public or the public interest, the Prophet always makes decisions after making a consultation with his friends. The second verse is in Surah Ali Imran (3): 159... في الامر... وشاورهم (...and consult with them in that matter ...). This verse emphasizes the need for deliberation in solving every problem, including statehood, which is imposed on each organizer of power in exercising his power.

From a state standpoint, deliberation is a constitutional principle in Islam, aimed at preventing the birth of decisions that harm the public interest or the people. Also serves as a "brake" or an absolute deterrent of power from a ruler or head of state. So that deliberation means as a forum to exchange ideas, ideas or ideas, including suggestions put forward in solving a problem before arriving at a decision making.

3. Principles of Justice

Quite a lot of verses of Al-Qur`an that describe justice, including those in surah al-Nisa '(4): 135

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَىٰ أَنفُسِكُمْ أَوِ الْوَالِدِينَ وَالْأَقْرَبِينَ إِن يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَاللَّهُ أَوْلَىٰ بِهِمَا فَلَا تَتَّبِعُوا الْهَوَىٰ أَنْ تَغْلِبُوا وَإِنْ تَلَوْا أَوْ تُعْرَضُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

Meaning: people who believe, be you who are truly enforcers of justice, be witnesses of Allah even if you are against yourself or your father and relatives. if he is rich or poor, then Allah knows his benefit better. So do not follow your passions because you want to deviate from the truth. and if you turn back (words) or are reluctant to be witnesses, then verily Allah is Knower of all that you do.

This verse means:

- a. Believers are obliged to uphold justice.
- b. Every believer when he becomes a witness he is obliged to be a witness because of God honestly and fairly.
- c. Humans are forbidden to follow lust.
- d. Humans are forbidden to abuse the truth

In Islam, justice is the truth. Truth is one of God's names. The source of truth in Al-Qur`an is called al-haq. Therefore, Al-Syaukani, as quoted by Abd. Muin Salim, states that justice is to settle matters based on the teachings contained in Al-Qur`an and the Sunnah, rather than establishing the law with the mind.

In relation to state power, the principle of justice includes three basic obligations for state administrators or a government as the holder of power, namely: 1) The obligation to implement state power that is fair, honest and wise; 2) The obligation to implement judicial power as fairly as possible; and 3) The obligation of state administrators to realize a goal of a just, prosperous, and prosperous society under the pleasure of God.

4. Equation Principle

The principle of equality in Islam can be understood among others from Al-Qur`an, sura al-Hujurat (49): 13

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

Meaning: To people, Verily We created you from a man and a woman and made you nations and tribes so that you would know one another. Surely the noblest of you by Allah are the ones who most fear among you. Allah is omniscient.

The verse teaches that humans are the same originating from the same origin that they must actually uphold these similarities and have the same position, which includes:

1) Principles of Recognition and Protection of Human Rights

In relation to human rights, there are two very important principles, namely the principle of recognizing human rights and the principle of protecting those rights. These principles are expressly outlined in Al-Qur'an, among others, in surah al-Isra '(17): 70

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْوَيْدِ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا

Meaning: And verily We have honored the sons of Adam, We have carried them on the land and in the sea, We have given them sustenance from the good and We have exalted them with perfect advantages over the many creatures We have created.

This verse teaches and contains the principle of recognition and protection of human rights which emphasizes three things, namely: 1) human equality; 2) human dignity; and 3) human freedom.

2) Principles of Free Justice

In Islam a judge has the authority that is free in making decisions. The judge must apply the principle of justice and equality to anyone. Allah confirms in surah al-Nisa '(4): 58

... وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ...

Meaning: ... and (telling you) when setting a law among men so that you determine justly ...

Therefore, the judge's decision must reflect a sense of legal justice towards anyone. The principle of free justice is not only a feature of a legal state, but also an obligation that must be carried out for each judge. Free justice is a requirement for upholding the principles of justice and equality of law.

3) The Principle of Peace

Islam highly upholds and prioritizes peace, as stated in surah al-Baqarah (2): 208

يَا أَيُّهَا الَّذِينَ آمَنُوا ادْخُلُوا فِي السِّلْمِ كَافَّةً

Meaning: you who believe, enter into the whole Islam ... Basically hostility or war is something forbidden in Al-Qur'an. War is only an emergency measure and is defensive or self-defense.

4) Principles of Welfare

Welfare in Islam aims to realize social justice and economic justice for all members of the community or the people, as the duty of state administrators. Al-Qur'an has set a number of sources of funds for social security for community members who need it based on the principles of social justice and economic justice. The sources of these funds include: zakat, shadaqah, grants, and endowments. It may also be state income such as taxes, duties, etc.

5) Principles of People's Obedience

The principle of obedience of the people has been confirmed by Al-Qur`an in surah al-Nisa '(4): 59

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولَى الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

Meaning: For who believe, obey Allah and obey the Messenger (Him), and ulil amri among you. then if you disagree about something, then return it to Allah (Al-Qur`an) and the Messenger (sunnah), if you truly believe in Allah and the day after, that is more important (for you) and better as a result .

"Obeying God" means submitting to the provisions of God, "obeying the Apostle" subject to the provisions of the Apostle, namely the Prophet Muhammad, and "obeying ulil amri" is subject to the provisions of the respective officers in the task force his power. The development of thoughts on the law and rules must return to the principles of the rule of God and the Apostle, as long as those provisions do not conflict with the provisions of Allah and His Messenger.

Al-Qur`an introduces terms that are relevant to political power, each with different connotations sharply. These terms are *sulthan*, "physical ability to carry out the influence and or coercion of other people or society", *mulk*, "power as the object of ownership", and law "the administration of order in human life with the use of rules or legal norms originating from Allah and the Prophet Muhammad or the results of human *ijtihad* ", " legal rules or norms ", and " decision making ".) Al-Qur`an commands that Shari'a laws be enforced in human life as individual and social order. This command implies giving authority to humans to organize their lives by applying God's law. That is, the essence of political power is the authority to carry out public order in God's law and the manifestation of such political power is a political system held based on and according to the law contained in Al-Qur`an.

If the definition of Constitutional Law is related to the principles of Islamic teachings about social life, then it can be concluded that, Constitutional Law is a set of legal regulations governing state organizations, relations between state equipment in a horizontal and vertical line and the position of citizens and Its human rights are of course based on Islamic teachings which are the regulators, which are due to the arrangement in more forms of principle which enable it to be developed, around its scope:

- a) Regulate state organization (State and Government Institutions)
- b) The existence of relations between State equipment
- c) Position of a citizen
- d) Human Rights owned by a citizen

Of these four elements, constitutional law in the view of Islam leads to political and state law (*Fiqh Siyasah*) or what can be said to be related to political power. Almost all political activities involve the use of power. The political scientific subject is the study of power, who owns it, how it is used, and what is the basis of its use. Power is the ability of a person to influence other individuals so that the individual does something he wants. "Power is the ability to get what they would not otherwise have done". (Steven Lukas, 1974).

Power is reflected in the ability to form a political agenda and prevent other decisions that should be made. This form of power can be controlling the minds of others by manipulating their perceptions and preferences. The source of power can come from the following things:

- 1. Physical coercion facilities such as weapons, technology and others
- 2. Wealth such as money, land, bankers, entrepreneurs and others
- 3. Normative such as religious leaders, tribal heads or recognized government.
- 4. Popularity of personal, like movie stars, soccer players.
- 6. Position expertise such as knowledge, technology, skills.

7. Organized masses such as labor organizations, farmers, teachers and others.
8. Information like the press that has the ability to shape public opinion.

In relation to the scope of this constitutional law, it covers various Islamic legal rules concerning the principal institutions in a country or government, which can be sorted by power and function, namely:

1. Legislative Institutions (*taqnin* assemblies), have and carry out power to make laws and regulations relating to issues not aqidah and rituals and which are not strictly regulated by Al-Qur`an and the Sunnah; also rules relating to the implementation of God's law.
2. Executive institutions (*tanfiz* assemblies), have and exercise the power to apply Allah's law and statutory law.
3. The Judicial Institution (*qadha'i* assemblies), has and exercises power to defend the positive laws of every attack and violation.

In the Law of the State there are elements that must be fulfilled to be said as a country, as found in the Montevideo Convention, namely:

1. There is a permanent population
2. Having territory
3. Sovereign government
4. Able to make relations with other countries.

In classical Islamic literature also found several formulations regarding the elements of the state, including the formulation of Ibn Abi Rabi 'mentioning at least five elements that must be owned by the State, namely, (1) Region, (2) Population, (3) Government, (4) Justice, and (5) The existence of state management. Al-Mawardi also wrote that there are five main elements in a country, namely, (1) Religion as the foundation of the state and people's unity, (2) Territory, (3) Population, (4) Authoritative Government, and (5) Justice or security. This is what requires an Islamic arrangement which causes him to be called Islamic state order law.

D. Conclusion

Islamic law is broad and includes all the rules about the ins and outs of human life. Among these are the provisions of the mu'amalah category in the broad sense in which the constitutional law is included. Muamalah law in its broadest sense is mostly explained in broad outlines which have the opportunity to be developed, through the pattern of the development of Islamic law, ijtihad. Therefore this constitutional law includes laws that can still be reconstructed and understood and have the opportunity to be developed. So that its existence is very necessary and in accordance with Islamic teachings that can be in accordance with every age and situation and condition that is always developing.

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